

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
TERRENCE MACK CARTER,
Defendant.

Case No.: 3:14-CR-1287-DMS

**ORDER DENYING MOTION FOR
SENTENCING MODIFICATION
UNDER 18 U.S.C. § 3582(C)**

Pending before the Court is Defendant Terrence Carter's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). For the following reasons, the Court denies Defendant's motion.

I.

BACKGROUND

On February 23, 2015, Defendant pled guilty to conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(B)(viii), and 846. (ECF No. 197.) He was sentenced to 151 months in prison to be followed by 8 years of supervised release on November 5, 2015. (ECF No. 247.) On April 28, 2020, Defendant filed a motion for compassionate release. (ECF No. 328.) This Court denied that motion without prejudice on May 20, 2020, for failure to exhaust administrative remedies. (ECF No. 332.)

1 Defendant has now exhausted his administrative remedies and moves again for
2 compassionate release. (ECF No. 337.) The United States filed an opposition to the
3 motion, (ECF No. 399), and Defendant filed a reply. (ECF No. 340.) The matter is fully
4 briefed and submitted.

5 II. 6 DISCUSSION

7 In general, a court may not modify a sentence of incarceration once it has been
8 imposed, unless expressly permitted by Rule 35 of the Federal Rules of Criminal Procedure
9 or by statute. *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003). The First Step
10 Act (“FSA”) is such a statute. *See* Pub L. 115-391, 132 Stat. 5194, 5239 (2018). Among
11 the criminal justice reforms implemented by the FSA, Congress amended 18 U.S.C.
12 § 3582(c)(1)(A) to allow a defendant to move a district court for compassionate release
13 after exhausting the BOP process.

14 The FSA allows a district court to modify a sentence and grant compassionate release
15 if it finds “extraordinary and compelling reasons” warrant such a reduction, “such a
16 reduction is consistent with applicable policy statements issued by the Sentencing
17 Commission,” and that the reduction complies with 18 U.S.C. § 3553(a). *See* 18 U.S.C.
18 § 3582(c)(1)(A). As the movant, Defendant bears the burden of establishing that he is
19 eligible for a sentence reduction. *See United States v. Jones*, 836 F.3d 896, 899 (8th Cir.
20 2016).

21 A defendant can only seek compassionate relief from a court “after the defendant
22 has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to
23 bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a
24 request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C.
25 § 3582(c)(1)(A). As noted, Defendant’s initial motion for compassionate release was
26 denied for failure to meet this requirement. (ECF No. 332.) After that denial, Defendant
27 filed a request for compassionate release to BOP. (ECF No. 337 at 10.) BOP denied that
28 request on June 3, 2020. (*Id.* at 13.) The United States does not dispute that Defendant

1 has exhausted his administrative remedies. (ECF No. 339 at 6.) Accordingly, the Court
2 may address this motion on its merits.

3 1. Extraordinary and Compelling Reasons

4 Defendant argues that his various medical conditions, demographic characteristics,
5 and family circumstances constitute “extraordinary and compelling reasons” entitling him
6 to early release under the FSA. (ECF No. 337.) In support of his motion, Defendant argues
7 that he suffers from obesity and hypertension, and that his body contains defective mesh
8 from a hernia surgery. (*Id.* at 6.) He claims that these medical issues put him at a higher
9 risk of experiencing serious illness and related adverse outcomes from COVID-19. (*Id.*)
10 He further argues that as an African American he is at greater risk of infection and death
11 from COVID-19 compared to the general population. (*Id.* at 6, 8; ECF No. 340 at 5.)
12 Finally, Defendant requests relief based on his need to care for his family after his father
13 undergoes a forthcoming hip surgery. (ECF No. 337 at 6–7.)

14 Defendant’s motion relies on an out-of-circuit decision, *United States v. Brooker*,
15 976 F.3d 228 (2d Cir. 2020), for the proposition that district courts, in their discretion, may
16 determine what constitutes “extraordinary and compelling reasons” for compassionate
17 release because the criteria set out in the United States Sentencing Commission *Guidelines*
18 *Manual*, § 1B1.13, are not binding. (ECF No. 337 at 4–5.) The Government argues the
19 Court lacks such discretion and is bound by the guidelines. (ECF No. 338 at 6–15.)
20 However, *Brooker* is not binding on this Court, and the Ninth Circuit has yet to address the
21 issue. Nonetheless, the Court need not determine whether “extraordinary and compelling
22 reasons” exist because the requested sentence reduction is not warranted under the factors
23 set forth in 18 U.S.C. § 3553(a).

24 2. § 3553 Factors

25 In determining whether to grant compassionate release, the Court must consider “the
26 factors set forth in section 3553(a) to the extent that they are applicable.” 18 U.S.C.
27 § 3582(c)(1)(A). Section 3553(a) provides that the sentencing court must impose a
28 sentence that is “sufficient, but not greater than necessary ... (A) to reflect the seriousness

1 of the offense, to promote respect for law, and to provide just punishment for the offense;
2 (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further
3 crimes of the defendant; and (D) to provide the defendant with needed educational or
4 vocational training, medical care, or other correctional treatment in the most effective
5 manner.” *Id.* § 3553(a)(2)(A)–(D). The Court also must consider, among other factors,
6 “the nature and circumstances of the offense and the history and characteristics of the
7 defendant” and the “need to avoid unwarranted sentence disparities among defendants with
8 similar records who have been found guilty of similar conduct.” *Id.* § 3553(a)(1), (6).

9 On balance, the § 3553(a) factors weigh against release. First, the crime at issue was
10 serious. Defendant’s conviction arises out of his involvement in a conspiracy to distribute
11 methamphetamine, where Defendant ordered two units of methamphetamine for further
12 distribution and admitted to disposing of 13.3 grams of methamphetamine while fleeing
13 from police. (*See* ECF No. 197.) Second, Defendant is a repeat drug trafficker. In 2005,
14 Defendant was convicted of a purchasing cocaine base for sale, (ECF No. 221 at 11), and
15 convicted of the same offense one year later in 2006. (*Id.* at 12.) The length of Defendant’s
16 sentence, therefore, serves to punish Defendant for the offense committed, deter future
17 criminal conduct and protect society. Third, Defendant’s criminal history is not limited to
18 drug offenses: he suffered true findings as a juvenile for robbery and assault with a deadly
19 weapon likely to cause great bodily injury in 2002 when he was 17 years old, and thereafter
20 was convicted of residential burglary in 2010. (*Id.* at 11–12.) This criminal history reveals
21 a disregard for the law and endangerment to public safety, particularly the history relating
22 to crimes of violence. Fourth, while Defendant is to be commended for his absence of a
23 disciplinary record and participation in many rehabilitative and educational programs while
24 in custody, (*see* ECF No. 328), these mitigating factors do not outweigh the aggravating
25 factors above. The Court also considers the need to avoid unwarranted sentence disparities.
26 Defendant argues his sentence is disproportionate to the sentences received by others for
27 the type of crime he committed, but this argument overlooks Defendant’s career offender
28 status and history of recidivism. Defendant was sentenced well below the low end of the

1 guideline range (262 months) and the recommendation of the probation department (168
2 months). (*Id.* at 20; ECF No. 247). The sentence imposed, 151 months, remains the right,
3 just and fair sentence, sufficient but not greater than necessary to meet the goals of the
4 § 3553(a) sentencing factors.

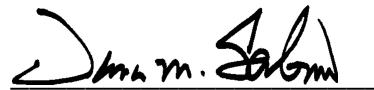
5 **III.**

6 **CONCLUSION AND ORDER**

7 For the foregoing reasons, Defendant's motion for compassionate release is denied.

8 **IT IS SO ORDERED.**

9 Dated: February 8, 2021



10 Hon. Dana M. Sabraw
11 United States Chief District Judge
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